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LABOUR DEPARTMENT.

No. L. S. 1862—L.W. 142-51-4, dated 18th June 1952.

Labour Disputes—Dispute between Workers and Management of Tobacco Manufacturers of (India) Ltd., Bangalore—Award of the Industrial Tribunal, Bangalore—published.

Read the following papers :—

(1) Reference dated the 9th June 1952, from the Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL, BANGALORE.

Monday, the 9th day of June 1952.

Present.

Sri T. Singaravelu Mudaliar, B.A., B.L. ... *Chairman*

Janab Mahamood Sheriff, B.A., LL.B. ... *Member*

Sri S. Rangaramiah, B.A., LL.B. ... *Member*

P. Ranganathan, No. 21, Watchman, Tobacco Manufacturers, (India) Ltd., Bangalore. *Complainant*

(Represented by Sri V. L. Narasimhamurthy, Advocate for the Tobacco Manufacturers Employees' Association, Bangalore).

Versus.

The Management of Tobacco Manufacturers (India) Ltd., Bangalore. *Respondents*

(By Mr. Alexander and E. S. Venkataramanan, Advocate.)

Complaint Number I-b of 51-52.

AWARD.

This is a complaint under Section 33-A of the Industrial Disputes Act, 1947.

Under Government Notification No. L.S. 2320—L.W. 142-51-2, dated 11th September 1951, the Government of Mysore referred to this Tribunal, the industrial disputes between the management of the Tobacco Manufacturers (India) Ltd., Bangalore and the workers employed by them.

On 16th October 1951, the Tobacco Manufacturers Employees Association filed one complaint with regard to three of the employees, *viz., D. Anthony (14), Gaviappa (37) and P. Ranganathan (21).* The Management field a joint objection statement with regard to the allegations in the joint petition. The Advocate for the Labour Association was directed to file a separate petition with regard to each individual employee. Accordingly, separate complaints were filed.

On the same day, *i. e.*, 16th October 1951, the Employers Company filed petitions under Section 33 of the Industrial Disputes Act, 1947, praying for permission to dismiss the same three workmen from 24th September 1951 since they were found in wrongful possession of cigarettes belonging to the Company, an

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offence under Factory Standing Order 21 (2)-*d*. In these petitions, it was alleged that they were filed without prejudice to their contention that the watchmen being members of the Watch and Ward staff were not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

The Complaint No. I-B relating to P. Ranganathan (No. 21) is that during the pendency of proceedings before the Tribunal, he was serving as a watchman in the Factory for over three years and was dismissed from service on 24th September 1951 under the following circumstances :—

The Complainant was doing duty on the evening of 21st September 1951 and when he went near his quarters for taking meals, he found his quarters being searched and was informed that some cigarettes were found in his box; that the box was not kept locked; that the quarters was always kept open and was not in the exclusive possession of the complainant and that the complainant was not responsible for the cigarettes being there.

It is alleged that the action of the Company is illegal and unjust. The Complainant therefore prays that the order of dismissal be set aside and his reinstatement ordered with emoluments up-to-date.

The Respondent Company has stated in the objection statement that the facts leading to the dismissal of the watchmen are mentioned in the petitions filed by the Management under Section 33 of the Act.

The petition under Section 33 filed by the Company with regard to Ranganathan (numbered as Serial No. 8) is :

That thirty loose Players Navicut Medium cigarettes and 48 mixed brands loose cigarettes in all 78 cigarettes were found in his quarters at room No. 16 in the coures of a search conducted by gate Seargent F. J. Burby in the presence of Havildar Arokyaswami and P. Ranganathan on 21st September 1951 at 19-45 hours ; that he could not give satisfactory explanation of the presence of those cigarettes in his box ; that an enquiry was held in accordance with the standing order and that the workman was found guilty of an offence under standing order 21(2)d under which theft of company's property is defined as misconduct. The punishment for misconduct is dismissal under standing order 22(b).

Since the matters involved in both the complaint and the petition are the same they were heard together.

The record of the proceedings relating to the enquiry of the offence committed by Ranganathan was produced before us by the Management. It is marked as Exhibit I. A record is made therein that on 21st September 1951, 78 loose cigarettes were found in room No. 16 occupied by Ranganathan in his box in the presence of Havildar Arokyaswami and the watchman Ranganathan. Sergeants Burby and Taylor were those who found these cigarettes. The report is signed by Ranganathan who was asked to attend the factory on 22nd September 1951 at 9 A.M. The investigation report shows that on 22nd September 1951, the factory Manager ordered investigation. On that day Sergeant Burby who made the charge was examined by the Labour Liaison Officer Mr. Siddappa. He says that having given information to the Management on 21st September 1951 that the gate sergeant should conduct a surprise search on watchman's quarters, he proceeded along with Taylor and Batson to the watchman's quarters at 7-30 P.M. on 21st September 1951. Havildar Arokyaswami was asked to call out all watchmen from their respective quarters to fall in. He then says that Mr. Taylor and he along with Havildar Arokyaswami went into room No. 16 occupied by watchman Ranganathan and during the course of the search in the presence of watchman Ranganathan, he recovered 78 cigarettes from watchman Ranganathan's steel box which was locked and unlocked for the purpose of search by watchman Ranganathan himself.

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Havildar Arokraswami was the next witness who was examined. He says that after he asked the watchmen to fall in, Mr. Burby, Mr. Taylor and himself entered room No. 16 occupied by watchman Ranganathan and searched his room. In the course of search Mr. Burby recovered 78 loose cigarettes from the steel box of watchman Ranganathan which the latter opened at the instruction of Mr. Burby.

Ranganathan's statement was also recorded. He stated that on 21st September 1951 his duty was between 4-30 P.M. to midnight near the G. Department exit; and that at 7-30 P.M., he was relieved by another watchman to enable him to take his food in his quarters. When he went his quarters he says that he saw seargents Burby and Taylor conducting the search of the quarters occupied by the watchmen. He admits that Gate Sergeant Mr. Burby asked him to open the steel trunk which was unlocked and that he exposed the box to him. He also says that Mr. Taylor searched his person also. He further says that he does not know anything further of the alleged recovery of cigarettes either from his steel box or from his boots.

The record shows that the report of the enquiry was sent the to Factory Manager and on 24th September 1951, the decision of the Factory Manager is recorded as "dismissed with effect from 24th September 1951."

Complainant Ranganathan was examined before the Tribunal. In his evidence he has admitted the search, but he says that the door of the quarters was not locked; that the quarters was being occupied by three persons and in the quarters are kept boxes belonging to each of these persons for keeping his uniform. He further says that he was not given an opportunity to consult the officers of the Labour Association; that at the enquiry held by the Labour Officer, he was not given an opportunity to examine them and that the Labour Officer did not ask him whether he had any witnesses. To a question put by Mr. Alexander on behalf of the management whether he could give any reason why seargent Burby and Havildar Arokyaswami would give any false evidence against him, he answered that Sergeant Taylor takes bribes for appointing new watchmen and that if he was removed he would have chance of appointing another and get bribes and that was the reason why those people deposed against him. When he was asked if he mentioned to the Labour Officer at the time of the enquiry that he did not keep any cigarettes in the box, his answer was that Mr. Siddappa did not question him and he did not say anything. In his evidence he says that he was not given an opportunity to make a statement or to cross-examine Arokyaswami and Burby. He further says that the Labour Officer did not ask him whether he had any witnesses.

Mr. V. L. Narasimhamurthy, Advocate, for the complainant has argued that the rules of natural justice were not adopted in this enquiry inasmuchas he was not given an opportunity to cross-examine witnesses examined and that the Labour Offieer did not ask him if he had any defence witnesses and he relies upon the decision of the Bombay High Court reported in A.I.R. 1952—Bombay—page 37—where their Lordships have held that "a domestic Tribunal must act honestly and with good faith and must give a delinquent a chance of explanation and defence. If its rules postulate an enquiry the delinquent must have a reasonable opportunity of being heard and of correcting and contradicting a relevant statement prejudicial to his view. The expression 'rules of natural justice' has been the subject of consideration in many cases and it has been held that so long as a domestic tribunal acts honestly in good faith, with a sense of responsibility and in consonance with its own rules, its decision cannot be questioned on ground of breach of rules of natural justice for the reason that in that case the rules of natural justice will be deemed to have been observed."

According to this ruling, the delinquent in this case should not have been refused the opportunity to cross-examine the witnesses and to produce any defence

witnesses if he wanted to do so. There is nothing in the proceedings of the enquiry which goes to show that he wanted to cross-examine the witnesses and to produce his defence witnesses and that these opportunities were denied to him. There is nothing to show that the domestic Tribunal in this case did not act honestly, in good faith, with a sense of responsibility or in consonance with its own rules. Therefore it cannot be said that the rules of natural justice were violated.

The suggestion made by Ranganathan that Mr. Burby might have falsely incriminated him cannot be believed since he did not make any such suggestion before the Labour Officer who took down his statement. Moreover under Standing Order 23, he could have made a complaint against such unfair labour practice and there is nothing to show that he had done it.

In the decision of the Labour Appellate Tribunal—reported in Madras Labour Law Journal—September 1951—page 314 at page 318—their Lordships have held "the result therefore is that the decision of the Management in relation to the charges against the employee will not prevail if :

(*a*) there is want of *bona fides*, or

(*b*) it is a case of victimisation or unfair labour practice or violation of the principles of natural justice, or

(*c*) there is a basic error on facts, or

(*d*) there has been a perverse finding on the materials. If after scrutiny on the aforesaid lines, it is found by the Tribunal that it ought not to interfere with the findings of the management that the charge has been proved, the Tribunal might next consider whether it should interfere with the punishment, The Management with the knowledge and experience of the problems which confronted in the day-to-day work of the concern, ordinarily ought to have a right to decide what the appropriate punishment should be but its decision is liable to be revised if the Tribunal is of opinion that the punishment is so unjust, that remedy is called for in the interest of justice. It must however be remembered that it is essential that the matter should not be reviewed altogether subjectively from the point of view of the employer or employee but also objectively in the interest of industry for bringing about a harmony in the relationship between the two."

Now applying these principles to the present case there is no want of *bona fides*, neither is it a case of victimisation, unfair labour practice nor violation of principles of natural justice. There is no basic error on facts. The question then left open is whether there has been a perverse finding on materials. The point for consideration on this question is whether the cigarettes were found in the box used by Ranganathan. The evidence of Burby and Arokyaswami is that Ranganathan himself opened the lock of the box in which the cigarettes were found. The statement of Ranganathan is that it was unlocked. Before us he says that the box was not locked. When he stated before the Labour Officer that the box was "unlocked" it would mean that the box had been locked and that it was unlocked. Even if it means that it had not been locked there was nothing to induce the manager not to believe the evidence of Burby and Arokyaswamy and come to the conclusion that the cigarettes were found in the box which had been locked and unlocked by Ranganathan.

There are no reasons therefore to say that there has been a perverse findings of facts on the materials. With regard to the punishment also there is nothing to interfere with the order of dismissal. The order of dismissal is therefore upheld.

The Management have put in an alternative plea in their application under Section 33 of the Industrial Disputes Act, stating that watch and ward were not

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workmen within the meaning of Section 2 (s) which defines a workman. Mr. Narasimhamurthy however referred to a decision reported in Madras Labour Law Journal—February 1952—page 264—where the West Bengal Tribunal—held that Durwans who are also watch and ward are workmen within the meaning of Section 2 (s) of the Industrial Disputes Act. Mr. Alexander however contends that this decision is under appeal and need not be binding. It is unnecessary to discuss this question since the permission is sought for under Section 33 on the assumption that watch and ward are workmen within the meaning of the Industrial Disputes Act.

We shall next consider the case of Anthony. His case is that he was doing duty at post No. 6 on 21st September 1951 in the evening; that somebody threw a stone at him; that he then went to post No. 10 to seek his help, but he found that he had gone to quarters for food; that when he went in search of him, he found his room being searched when some cigarettes were found on the top of the cupboard; that the cupboard was locked and was not opened; that he was not in exclusive possession of the quarters; the door of which is never closed; that the complainant was not responsible for the cigarettes being there; and that he was dismissed on 24th September 1951 which order is illegal and unjust. He prays that the order of dismissal be set aside and he be reinstated.

In the first joint application filed by the Labour Association, it was stated that watchman Anthony was not on good terms with the sergeant. In that application it was also urged that on 21st September 1951, the sergeant himself was found carrying tins of cigarettes by the Excise Department.

The Management in their objection statement have referred to their petition under Section 33 for the facts leading to the dismissal of Anthony and deny the allegation that Anthony was not on good terms with the sergeant and that the Sergeant was found carrying tins of cigarettes by the Excise Department.

In the petition under Section 33 filed by the Management, it is alleged that 73 Players Medium Navicut cigarettes, two coils of rope each nine feet long, the property of the Company were found in the wall cup-board of Anthony in his quarters at room No. 4 in the course of a search conducted by Gate Sergeant Taylor in the presence of Havildar Arokyaswami and Anthony, that the rope was found under his steel box and that since Anthony could not give satisfactory explanation, he was found guilty of the offence under factory Standing Order 21 (2)d. The Company therefore prays for permission to dismiss Anthony from 24th September 1951.

In the record of proceedings, Exhibit I, on 21st September 1951, it is seen that Anthony was informed of the charge against him and was asked to appear at the enquiry on 22nd September 1951. On the investigation report, the Factory Manager ordered investigation. On 22nd September 1951, Gate Sergeant Taylor was examined. He stated that while making a search on 21st September 1951 at about 7-30 P.M., the quarters occupied by Anthony in the presence of Batson and Arokaswami, he recovered 73 Players Medium Navicut lose cigarettes in a cigar box which was in his wall-cupboard and two coils of rope—9 feet each piece under his steel box. Havildar Arokyaswami also made the statement, that he witnessed the search and recovery of the articles mentioned above, from the quarters of the watchman D. Anthony at about 7-40 P.M. on 21st September 1951. He also says that the cigarettes were in a cigar box in Anthony's cup-board. Anthony also made a statement admitting the recovery of the articles, but has stated that he does not know how these things came to be found in his room. On this report made by the Investigating Officer, the Factory Manager made the order " Dismiss with effect from 24th September 1951 ".

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Anthony was examined before the Tribunal. He says in his evidence that a room was given to him and watchman Nambiar; that Sergeant Taylor and Burby were searching his room on 21st September 1951; that he was taken inside the room when they found cigarettes on the shelf; *i.e.*, on the top of the shelf; that the cigarettes were not found inside the cup-board: that the cup-board was locked; that the room was never locked and is accessible to others He also says that he found coils of rope under the cot. He also says that at the enquiry held on the next morning he was not given an opportunity to seek the help of the Labour Association to file the statement, to cross-examine the witnesses or to examine his own witnesses. He says that he did not keep the cigarettes in his room. He further alleges that he did not make any statement before the Labour Officer, but he admits that a record was made and that he was asked to sign it, which he did. In cross-examination, he admitted his signature Exhibit I-a—which is affixed to his statement. Anthony does not say anything with regard to the ill-will against the Gate Sergeant.

The records of proceedings in this case and the evidence of Anthony go to show that the room in which Anthony had his box was not in his exclusive possession and that it was occupied by watchman Nambiar also. It is also evident that the door of the room is open and the room is accessible to others also. The cigarettes were found—according to Mr. Taylor—in a cigar box which was in the wall cupboard. Anthony says in his evidence that the cigarettes were found on the top of the cup-board and not inside the cupboard which he says was locked. There is nothing in the evidence of both Taylor and Arokyaswami to show that the cupboard was got opened as was done in the case of Ranganathan. Under such circumstances, it is difficult to say that the cigarettes were found inside the cupboard. If the cigarettes were found outside the cupboard in a room which is not in the sole occupation of Anthony but which is accessible to both watchman Nambiar and also others, it is difficult to conclude that it was Anthony who placed those cigarettes on the cup-board. Moreover, a watchman who had stolen the cigarettes of the Company could not have kept the cigarettes so openly in a room on the cupboard in the room which was accessible to others so as to be detected easily. The same remarks apply to the coils of rope also. It is not improbable that others might have placed those articles as found during the search and it is difficult to fix the guilt on Anthony as being the thief of those articles.

The Factory Manager who has passed the order of dismissal does not seem to have considered these aspects of the case before he concluded that Anthony was the thief. The possible inferences of the findings of these articles in Anthony's room are either Anthony has kept them there or some others might have kept them there. Since the Factory Manager has not considered these aspects before concluding that Anthony was the thief, we do not accept the finding which, in our opinion, is perverse according to the ruling of the Labour Appellate Tribunal quoted above.

The order of dismissal of Anthony cannot stand. He will be reinstated with effect from 24th September 1951 till he applies for rejoining his service.

With regard to Gaviappa, his complaint is that he was dismissed on 22nd September 1951 from service on the alleged ground that some cigarettes were found in a box and a coat in watchman's quarters. He states that he was not present at the time of the search; that the box was kept unlocked; that the coat was hanging on a peg; that on the 20th of September 1951 after finishing his work, he went to his house having availed himself of leave on the next day, and that when he returned to duty, he was informed of his dismissal. He further alleges that the quarters

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searched was not in his exclusive possession but that others have access to it. The door of the premises, he says, is always kept open.

In the application under Section 33 filed by the Management, it is stated that one packet of capstan cigarettes was found in his great coat pocket and 21 lose mixed brand cigarettes were found in his box during a search conducted by Gate Sergeant Burby in the presence of Havildar Arokyaswami on 21st September 1951 at 21-20 hours. Since no satisfactory explanation was given, he was found guilty of the offence under Factory Standing Order 21(s)-d. Permission is therefore sought to dismiss him from 24th September 1951.

In the record of proceedings, Exhibit I it is recorded that one packet capstan cigarettes were found in his great coat pocket and 21 mixed lose cigarettes, in his box. This is on page one of the record and this purports to contain the signature of Gaviappa for his undertaking to appear at the investigation to be held on 22nd September 1951 at 9 a.m. This document is dated 21st September 1951. Page 2 contains the investigation report ordered by the Manager.

The first witness examined during the enquiry was Burby, the Gate Sergeant. He stated that during the surprise search on watchmen's quarters on the evening of 21st September 1951, he, along with Batson searched the quarters occupied by watchman Gaviappa at about 9-20 P.M., that Gaviappa was not present during the search as he was off-duty, that he recovered one packet of capstan navicut cigarettes from his great coat and 21 mixed brands cigarettes from his steel box which was unlocked. Arokyaswami, the Havildar corroborates Burby. He also says that watchman Gaviapya was not present during the search as he was off-duty. Gaviappa made a statement that he was not present at the search and that he knew nothing about the recovery of cigarettes from his steel box. He says that he went off-duty on 20th September 1951 and 21st September 1951 was his weekly holiday and that he returned to the quarters at 6 A.M. on 22nd September 1951 to resume duty; that when he went to his quarters he found his belongings rummaged and on enquiry his room-mate Vithoba told him that Gate-Sergeants had made a surprise search on all the quarters of the watchmen the previous night. In his evidence before the Tribunal, he has stated that the room was allotted to watchman Uthigudi and himself; that the room was never locked and was accessible to anybody; that he was supplied with a great coat by the factory which was hung on the hook attached to the wall; that the coat was not taken home; that a steel trunk is supplied and trunks are not locked; and that in the steel trunk was kept the uniforms supplied to him by the Company. He further says that on 22nd September 1951 the Labour Officer sent for him and told him that cigarettes were found in his great-coat; that he told Mr. Siddappa, the Labour Officer that he had left his duty on 20th September 1951 at 4-30 P.M. and having availed the weekly holiday on 21st September 1951, he returned to duty on 22nd September 1951. In the record of proceedings Exhibit, I, the Factory Manager ordered " Dismiss with effect from 24th September 1951 ".

In this case, the case against Gaviappa is not at all satisfactorily established. The door of the room in which he had kept his steel trunk and his great coat was open, and the room was accessible to his room-mate Uthigudi and also to others. The steel trunk in which he kept his uniform must be taken to have been open and Burby also says it was unlocked; the great coat was hanging on a hook and any body could have inserted cigarettes in its pocket; Gaviappa was also not present at the time of the search. Under such circumstances, it is very difficult to believe that it was Gaviappa who kept the cigarettes in the great-coat and in the steel box. He was absent from duty from 20th September 1951 till the morning of 22nd September 1951 and he was on holiday on 21st September 1951. If Gaviappa

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had stolen the cigarettes for his use, he would not have left them behind in his quarters but would have taken them for use during his holiday. Moreover, he would not have been so foolish as to leave them in such an open way as to be easily caught.

From the records of the proceedings, it is not clear whether the Factory Manager considered these aspects of the case before he came to the conclusion that Gaviappa was guilty of theft. We are therefore of opinion that the finding of the Factory Manager is not correct. The finding is perverse and we set it aside. He will be reinstated with effect from 24th September 1951 till he applies or rejoining service.

We wish to point out that on page 1 of the record of proceedings Exhibit I, there is a signature purporting to be that of Gaviappa. The entries on this page were made on 21st September 1951. Gaviappa says that he was off-duty on 21si September 1951. Witness Arokyaswami has admitted that Gaviappa was not present during the search for he was off-duty. If Gaviappa was on leave on 21st September 1951, it is difficult to understand how he could have affixed his signature on 21st September 1951 undertaking to appear on 22nd September 1951 at the investigation. This is a matter for the Management to investigate.

T. SINGARAVELU MUDALIAR,
Chairman.

MOHAMOOD SHERIFF,
Member.

S. RANGARAMIAH,
Member.

NOTIFICATION.

No. L.S. 1362—L.W. 142-51-4, Bangalore, dated 18th June 1952.

WHEREAS under Section 33-A of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), a complaint was made by P. Ranganathan, No. 21, Watchman and two others to the Industrial Tribunal, Bangalore, against the Management of Tobacco Manufacturers of (India) Ltd., Bangalore;

And whereas the award of the said Tribunal in respect of the said complaint has been received;

NOW THEREFORE, in exercise of the powers conferred by Section 17 of thes aid Act, His Highness the Maharaja of Mysore hereby directs that the said award, as above, be published in the *Mysore Gazette.*

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and
Secretary to Government,
Law Department.

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